SUPREME COURT OF THE UNITED STATES

October Term, 1968.

MENGELKOCH ET AL. *v.* INDUSTRIAL WELFARE COMMISSION AND NORTH AMERICAN AVIATION, INC.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA.

No. 375. Decided October 28, 1968.

PER CURIAM.

A three-judge federal court, convened pursuant to 28 U. S. C. § 2281, determined that "there is no jurisdiction for a three-judge court," and entered an order dissolving itself. — F. Supp. —, —. The single district judge in whose court the case was originally filed considered further and dismissed the case without prejudice under the doctrine of abstention, stating in his memorandum opinion that "[t]he order dissolving the three-judge court is incorporated in this memorandum by reference." — F. Supp. —, —. Appellant appeals from both judgments. In these circumstances, we have no jurisdiction to entertain a direct appeal from the decision of the single judge; such jurisdiction is possessed only by the appropriate United States Court of Appeals. 28 U. S. C. § 1291. Moreover, we have held that when, as here, a three-judge court dissolves itself for want of jurisdiction, an appeal lies to the appropriate Court of Appeals and not to this Court. *Wilson* v. *Port Lavaca*, 391 U. S. 352.*

Although the appellants have lodged in the Court of Appeals for the Ninth Circuit a protective appeal from the decision of the single judge, it does not appear from the record that such an appeal has been filed with re-

*We think it makes no difference in principle that in *Wilson* v. *Port Lavaca* the single judge actually adopted the opinion of the three-judge court as his own.

spect to the three-judge order. Therefore, we vacate the order of the three-judge court and remand the case to the District Court so that a timely appeal may be taken to the Court of Appeals. See *Wilson* v. *Port Lavaca, supra; Utility Comm'n* v. *Pennsylvania R. Co.*, 382 U. S. 281, 282. The appeal from the decision of the single judge is dismissed for want of jurisdiction.

It is so ordered.